ATTORNEY FOR APPELLANT:

JEFFERY D. STONEBRAKER
Jeffersonville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BRADLEY TYLER SANDERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-0512-CR-585
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Cecile A. Blau, Judge
Cause No. 10D02-0501-FD-48

October 4, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Bradley Tyler Sanders appeals his convictions for possession of methamphetamine as a class D felony,[1] battery as a class A misdemeanor,[2] obstructing traffic as a class B misdemeanor,[3] criminal mischief as a class B misdemeanor,[4] and his status as an habitual substance offender.[5] Sanders raises two issues, which we restate as:

I. Whether the trial court denied Sanders his right to be present at all critical stages of his trial; and

II. Whether the evidence is sufficient to sustain Sanders's status as an habitual substance offender.

We affirm.

The relevant facts follow. On January 21, 2005, Clark County Sheriff's Lieutenant James McCartney and Indiana State Trooper Jeffrey Kellogg were advised that a man was walking in the middle of U.S. 31 and was blocking traffic. Lieutenant McCartney and Trooper Kellogg found Sanders walking in the middle of U.S. 31 with several vehicles behind him. When Lieutenant McCartney and Trooper Kellogg spoke to Sanders, Sanders did not respond and kept walking with his head down. When Sanders was approximately ten feet from Lieutenant McCartney, he clenched his fists, lunged at

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[1] Ind. Code § 35-48-4-6(a) (2004).

[2] Ind. Code § 35-42-2-1 (2004) (subsequently amended by Pub. L. No. 2-2005, § 125 (eff. April 25, 2005)).

[3] Ind. Code § 35-42-2-4 (2004).

[4] Ind. Code § 35-43-1-2 (2004).

[5] Ind. Code § 35-50-2-10 (2004) (subsequently amended by Pub. L. No. 71-2005, § 12 (emerg. eff. April 25, 2005); and Pub. L. No. 213-2005, § 5 (eff. May 11, 2005)).

McCartney, and tried to punch him. Sanders hit Lieutenant McCartney on the forehead. Sanders was arrested and placed in Lieutenant McCartney's police car. While Lieutenant McCartney was driving to the jail, Sanders started kicking the windshield and knocked a police video camera from the windshield. Sanders continued to be combative and was eventually placed in leg shackles for the trip to the jail. At the jail, a small packet of white powdery substance, later identified as methamphetamine, was found in the pocket of his jeans.

The State charged Sanders with possession of methamphetamine as a class D felony, battery as a class A misdemeanor, obstructing traffic as a class B misdemeanor, criminal mischief as a class B misdemeanor, and being an habitual substance offender. During his jury trial, Sanders interrupted the State's opening argument and closing argument. The trial court repeatedly admonished Sanders to remain quiet and warned Sanders that he would be removed from the courtroom if he continued to speak out. During defense counsel's closing argument, Sanders again interrupted, and the trial court had Sanders removed from the courtroom. The trial court decided that Sanders would not be in the courtroom for the jury's decision, and defense counsel objected. The trial court was advised that Sanders was pacing and had not calmed down.

During the habitual substance offender phase of the trial, Sanders was not present, and his counsel did not object. The State offered Exhibits 3 and 4 regarding Sanders's prior convictions for possession of marijuana as a class A misdemeanor and possession of methamphetamine as a class D felony. Sanders's counsel objected to the admission of

the exhibits based upon hearsay. He also argued that a records custodian should have testified to certify the documents as true and accurate. The trial court overruled his objection and entered the exhibits into evidence. The jury then found that Sanders was an habitual substance offender.

The trial court sentenced Sanders to a two and one-half year sentence for the possession of methamphetamine conviction, a six-month concurrent sentence for the obstructing traffic conviction, a one-year consecutive sentence for the battery conviction, and a six-month consecutive sentence for the criminal mischief conviction. The trial court enhanced the sentence by six years for Sanders's status as an habitual substance offender, for an aggregate sentence of ten years.

I.

The first issue is whether the trial court denied Sanders his right to be present at all critical stages of his trial. A criminal defendant's right to be present at his trial derives from the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 13 of the Indiana Constitution. See Ridley v. State, 690 N.E.2d 177, 180-81 (Ind. 1997), overruled on other grounds by Whedon v. State, 765 N.E.2d 1276 (Ind. 2002). However, a defendant's right to be present under either the United States or Indiana Constitutions may be waived if such waiver is knowing and voluntary. Harrison v. State, 707 N.E.2d 767, 785 (Ind. 1999), reh'g denied, cert. denied, 529 U.S. 1088, 120 S.Ct. 1722 (2000); Dodson v. State, 502 N.E.2d 1333, 1337 (Ind. 1987); Campbell v. State, 732 N.E.2d 197, 204 (Ind. Ct. App. 2000). Unless waived, a defendant's absence

raises an inference of prejudice. Ridley, 690 N.E.2d at 181. The United States Supreme Court has held:

> [A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.

Illinois v. Allen, 397 U.S. 337, 90 S. Ct. 1057, 1060-1061 (1970), reh'g denied, (footnote omitted).

Sanders argues that his conduct was not "so disorderly, disruptive, and disrespectful that the trial could not be continued with him in the courtroom." Appellant's Brief at 16. We disagree. Despite the trial court's warnings, Sanders repeatedly interrupted the proceedings with outbursts and was disruptive. The trial court did not abuse its discretion by removing Sanders from the courtroom.

Sanders further argues that the trial court's refusal to return him to the courtroom was clearly unreasonable. According to Sanders, the trial court should have advised him that he could return to the courtroom when his behavior changed. Sanders's argument fails to recognize the short amount of time at issue here. Sanders was removed during closing arguments. At the time the jury rendered its verdict regarding the possession of methamphetamine, obstructing traffic, battery, and criminal mischief charges, the trial court had been informed that Sanders was still pacing and had not calmed down. After the verdicts were read, the trial court proceeded with the habitual substance offender

phase, which consisted of a reading of instructions, short opening and closing statements, and the admission of two exhibits. No witnesses were presented during this phase.

Moreover, even if we were to agree with Sanders, a denial of the right to be present during all critical stages of the proceedings under the Sixth Amendment is a constitutional right that is subject to a harmless error analysis. Hernandez v. State, 761 N.E.2d 845, 853 (Ind. 2002), reh'g denied. Further, under the Due Process Clause, "a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." Hubbell v. State, 754 N.E.2d 884, 895 (Ind. 2001). Lastly, a violation of Article I, Section 13 of the Indiana Constitution is subject to a harmless error analysis. Debro v. State, 821 N.E.2d 367, 375 (Ind. 2005). Sanders has not shown, or attempted to show, how he was harmed by his absence or how his presence would have contributed to the fairness of the procedure. Any error in the trial court's exclusion of Sanders from the courtroom was harmless. See, e.g., Ridley, 690 N.E.2d at 180-181 (holding that the defendant failed to show how the proceedings were critical to the outcome of the trial or how his presence would have contributed to the fairness of the procedure).

II.

The next issue is whether the evidence is sufficient to sustain Sanders's status as an habitual substance offender. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the

reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

To establish that Sanders was an habitual substance offender, the State was required to prove beyond a reasonable doubt that Sanders had been previously convicted of two prior unrelated substance offense convictions. Ind. Code § 35-50-2-10. The State offered Exhibits 3 and 4 regarding Sanders's prior convictions for possession of marijuana as a class A misdemeanor and possession of methamphetamine as a class D felony. Sanders's counsel objected to the admission of the exhibits based upon hearsay. He then argued that a records custodian should have testified to certify the documents as true and accurate. The trial court overruled his objection and entered the exhibits into evidence. The jury then found that Sanders was an habitual substance offender. On appeal, Sanders argues that the evidence is insufficient because: (1) Exhibit 4 was not properly certified where only one page of the twenty-seven page exhibit contained a certification stamp; and (2) the State failed to demonstrate that the individual identified in Exhibits 3 and 4 was Sanders.

A. Exhibit 4 Certification.

The admission of documentary evidence at trial requires the proponent to show that the evidence has been authenticated, or simply put, that the evidence "is what its proponent claims." Ind. Evidence Rule 901(a). A piece of evidence may be authenticated by any method provided by rule of the Indiana Supreme Court, statute, or

the state constitution. Evid. R. 901(a)(10). Where the document at issue is a domestic public record, the document is self-authenticating and no extrinsic evidence is necessary for its admission if the original or duplicate of the record is proved in the following manner:

> An official record kept within the United States, or any state . . . when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy. Such publication or copy need not be accompanied by proof that such officer has the custody. Proof that such officer does or does not have custody of the record may be made by the certificate of a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

Ind. Evidence Rule 902(1).

Exhibit 4 is a twenty-seven page document containing the chronological case summary regarding Sanders's possession of methamphetamine conviction, the probable cause affidavit and its exhibits, the amended charging informations, the plea agreement with exhibits, and the judgment of conviction/sentencing entry. Each of the documents in Exhibit 4 bear the same cause number and identify the defendant as Bradley Sanders. A certification stamp and signature of the Clerk of Clark County is located on the first page of the exhibit only.

According to Sanders, each document in Exhibit 4 should have been separately certified, and "[a]t best the certification could be construed as certifying the chronological case summary . . . ." Appellant's Brief at 20. The Indiana Supreme Court

considered a similar argument in Craig v. State, 730 N.E.2d 1262, 1267 (Ind. 2000). There, one of the State's exhibits contained certified records from Wisconsin. Craig, 730 N.E.2d at 1267. The certification did not list the specific documents attached, and the State had removed documents that contained information about the defendant's other offenses and juvenile record. Id. The court noted that "[n]evertheless, each of the attached documents bears [the defendant's] name, date of birth, and prison identification number. Whatever documents may have been removed do not affect the authenticity of those that remained." Id. Likewise, here, all of the documents in Exhibit 4 bear the same cause number and Sanders's name. We conclude that the trial court did not abuse its discretion by admitting Exhibit 4. See, e.g., id.; Chanley v. State, 583 N.E.2d 126, 131 (Ind. 1991) (holding that the certification on a single "page" of either challenged exhibit provided adequate certification for the entirety of each exhibit as the certification placement "in no way caus[ed] confusion as to the authenticity of the paper"); Miller v. State, 563 N.E.2d 578, 584 (Ind. 1990) (ruling a multi-page document was admissible under T.R. 44(A)(1) where the certification of a prior felony conviction referred to "foregoing" documents but which was stapled to the top of the exhibit and thus nothing was "foregoing"), reh'g denied.

B. Identification.

In regard to the use of documents to establish the existence of prior convictions, the Indiana Supreme Court held in Tyson v. State, 766 N.E.2d 715, 718 (Ind. 2002), that:

> Certified copies of judgments or commitments containing a defendant's name or a similar name may be introduced to prove the commission of

> prior felonies. While there must be supporting evidence to identify the defendant as the person named in the documents, the evidence may be circumstantial. If the evidence yields logical and reasonable inferences from which the finder of fact may determine beyond a reasonable doubt that it was a defendant who was convicted of the prior felony, then a sufficient connection has been shown.

(internal citations omitted). Here, Exhibits 3 and 4 contained the same name, Bradley Sanders, the same address, the same date of birth, and Exhibit 4 contained a copy of a driver's license, including the photograph, for Bradley Sanders. The jury could have concluded based upon circumstantial evidence that the defendant was the same Bradley Sanders identified in Exhibits 3 and 4. See, e.g., Tyson, 766 N.E.2d at 718 (holding that the identifying information in the habitual offender exhibits was sufficient where the name of the offender and other identifying information matched the defendant).

For the foregoing reasons, we affirm Sanders's convictions for possession of methamphetamine as a class D felony, battery as a class A misdemeanor, obstructing traffic as a class B misdemeanor, criminal mischief as a class B misdemeanor, and his status as an habitual substance offender.

Affirmed.

NAJAM, J. and ROBB, J. concur